

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

MISCELLANEOUS LABOUR APPLICATION NO. 585 OF 2020

BETWEEN

HALIMA RAJABU JUMA & ANOTHER.....APPLICANTS

VERSUS

MODERN SAMA HOTELRESPONDENT

(From the ruling Commission for Mediation & Arbitration of DSM at Ilala)

(Mahindi: Mediator) Dated 09th August 2019 in Labour

Dispute No. CMA/DSM/ILA/R. 397/18)

RULING

23rd March 2022 & 22nd April 2022

K. T. R. MTEULE, J.

This is an application for extension of time to file an Application for Revision against the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/ILA/R. 397/18. In this application, the Applicant **HALIMA RAJABU JUMA & ANOTHER** are praying for the orders of the Court in the following terms: -

1. That, the Court be pleased to grant leave for extension of time to file an application for revision against the Commission's Ruling in the Labour Dispute No.

CMA/DSM/ILA/R.397/18 dated at 09th August, 2019, at the Commission for Mediation and Arbitration at Dar es Salaam.

2. That Honourable Court be pleased to grant leave so that the application can file a fresh application for Revision out of time.
3. Any others order this Court may deem fit and just to grant.

The application is accompanied by a Chamber Summons supported by a joint affidavit affirmed by the applicants. Opposing the application, the respondent filed a Counter Affidavit of Joel Samwel Mataba who is the respondent's Principal Officer.

The brief background of the dispute is derived from the affidavit, counter affidavit, parties submissions and the decision of the CMA as explained hereunder. The dispute amongst the parties emanates from some applicants' claimed salary arrears accumulated from July, 2017 to April, 2018 and complaint on unfair termination. What I gather from the decision of the CMA, it appears that the applicants ought to have filed their claim within 274 days from the date it was ought to have been filed if counted from the date when the salary arrears felt due.

Along with the application for the claim of salary arrears the Applicant filed an application for condonation seeking for extension of time to challenge the employer's decision.

It is not in dispute that there were various meetings held amongst the applicants and the respondent in discussing these claims and the Respondent was admitting the claims with promise to pay. This was the ground given by the applicants in the CMA for the delay in filing the application. Another ground assigned by the applicants for the delay was the steps they took to complain before the District Commissioner in attempt to compel the Respondent to pay the unpaid salary arrears. The applicants gave a further reason that there was a delay to appoint an administrator of the estate of the Respondent after the death of their director.

The application in the CMA was dismissed on 09th August, 2019 as the Mediator found that the applicants failed to explain reasonable cause for the delay in instituting their complaint. All the reasons given by the applicants were found to have no strength to justify extension of time.

The applicants were not satisfied with the Commission's Decision. They want to challenge it by a way of revision before this court but

again they are time barred to file the said revision hence this present application which was filed 11th December, 2020 praying for extension of time so as to file Revision Application against the CMA ruling dated 09th August, 2019 denying extension of time.

The Applicant was represented by Mr. Michael Mgombozi, Personal Representative, whereas the Respondent was represented by Mr. Yuda Dominic, Advocate. The hearing proceeded by way of oral submissions. Mr. Mgombozi submitted that after getting the impugned decision, the applicant sent their complaints to the higher authority within CMA believing that mediator's errors will be corrected. He stated that together with sending the complaint, they could not get any solution, but the Director directed the file to be remitted to the CMA mediator in Dar es Salaam. He added that by that time the applicant's representative was sick and finally passed away. Therefore, they lost legal assistance.

Another ground advanced by Mr. Mgombozi to justify the application include asserted irregularities in the CMA's decision resulting from mediator's findings. He named one of the irregularities to be the fact that the dispute was instituted just 6 days after the termination, but the applicants were not paid at all. Secondly, he submitted that the

commission ought to consider that the applicants had rights to be paid for the service they rendered to the respondent. The **third** irregularity asserted by Mr. Mgombozi is that the passing away of the respondent's director was followed by processes to appoint Administrator of Estate and that there was no person to pay their salary prior to the appointment of the administrator of the Estate in Probate Cause No. 278 of 2007 which the applicants attached with their joint affidavit. Supporting his argument regarding irregularities Mr. Mgombozi cited different cases including the case of **Mohamed Enterprises Vs. Mwalimu Wasimba & 17 others**, Miscellaneous Application No. 218 of 2019, High Court of Tanzania, at Dar es Salaam, (unreported). They thus prayed for extension of time to challenge the decision of the CMA.

Disputing the application Mr. Dominic challenged the conformity of the submissions of Mr. Mgombozi with the contents of the joint affidavit of the applicants. According to Mr. Dominic the applicants' submission is not related to what is deponed. Pointing out the discrepancy, he submitted that the applicants' states that the dispute was timely submitted to the CMA, while CMA form No. 1 shows that applicants prayed for condonation. Another discrepancy is the

Probate and Administration issue which is not reflected in the joint affidavit while the applicants stated that administrator of estate was one of the reasons for delay in CMA. On that basis he is of the view that applicants' submissions should not raise new issues but only confine itself to issues before the court.

Regarding the issue of reporting to the higher authorities within CMA, Mr. Dominic is of the view that this allegation has no merit because there is no other authority above CMA apart from this Court; and if we assume so, the applicants should have deponed this fact in their affidavit.

Mr. Dominic submitted further that the applicants were supposed to explain each day of delay from 9th August, 2019 when the CMA ruling was issued to 11th December, 2020 when this application was filed which is more than 1 one year and 3 months. Supporting his submission, he referred to the Court of Appeal of Tanzania in the case of **Sebastian Ndaula Vs. Grance Wamata**, Civil Application No. 4 of 2014 (unreported).

Regarding illegality in Mr. Dominic's view this argument has no merit because nowhere has it been reflected in the affidavit. For that reason, he is of the view that the issue of illegality should be ignored.

Mr. Dominic further argued that if the issue of illegality could be deponed by the applicants in the affidavit, the same must be apparent on the face of the record. In bolstering his argument, he cited the case of **Principal Secretary, Ministry of Defence & National Service Vs. Derram Valambia (1992) TLR 182**. He added that the authority cited by applicants are irrelevant, for instance, the MUCCOBS' case had illegalities which were pointed out in the affidavit but in our case no such a thing in the affidavit. In Mohamed Enterprises, it was on jurisdiction while in this case there is no issue of jurisdiction. He maintained that it was correct for the CMA to dismiss the application.

Lastly, Mr. Dominic submitted that there was no any delay in supplying copies of the decisions, on the ground that both parties were supplied with copies of decision on 09/08/2019 which was the same date when the ruling was delivered.

From the submissions of the parties, the main issue for determination is whether the applicants have adduced sufficient cause to warrant extension of time to file review application against the CMA decision of 9/8/2019. Before disposing the disputed issue, this Court find worth to address respondent's concern that the applicants'

representative submitted new facts which were not deponed by the applicants in their affidavit. Having gone through the applicants' affidavit at page 13 the issue of filing of the matter out of time was deponed. Further the death and appointment of the administrator of the Respondent's estate is in the affidavit and argued as indicated at page 2 paragraph 2 of the CMA ruling, on that reason I could not see any claimed new issues in the submission.

Having found that the concern raised by respondent on new issues in the submission lack merits, then I proceed to determine the main issue in this application which is "whether the applicants adduced good reason for this Court to grant extension of time for the applicants to file revision application against the ruling of the CMA in Labour Dispute No. CMA/DSM/ILA/R.397/18 dated 9th August, 2018". In answering the disputed issue, it is important to note that the power of the court in this application is derived from Rule 56 (1) of the Labour Court Rules 2007 which provides:-

56 (1) "The court may extend or abridge any period prescribed by these rules on application and on good cause shown, unless the court is precluded from doing so by any written law."

From the foregoing provision, it means, this court has discretion to extend or abridge any period of time prescribed by the Rules upon applicants showing good cause or reasonable cause.

The applicants prayed to be granted time to file application for revision for three reasons; **firstly**, it was alleged that it took time to process for an administrator of the estate of the respondent's director. **Secondly**, the Applicants after being aggrieved by the CMA decision, forwarded the matter to the higher authority within CMA and **thirdly** the CMA ruling contain irregularities.

It is appropriate at this juncture to point out that the record available reveals that the impugned application in the CMA was dismissed on 09th August, 2019 when the Mediator found that the applicants failed to explain reasonable cause for the delay in instituting their complaint. According to Section 91 (1) (a) of the Employment and Labour Relations Act, Cap 366 R.E 2019 any person aggrieved by the decision of the Commission may apply for revision within six weeks from the date he was served with the impugned award. It is not disputed that both parties were served with the decision on the same date when it was delivered.

Basing on the above provision the applicants were supposed to challenge the disputed award/ruling by 21st September, 2019. That means till 11th December, 2020 when the present application was filed, there was a delay of more than twelve months.

Starting with the **first**, ground of application regarding the death of the Director and appointment of the administrator, the evidence available from CMA record as per **Annexure MS-2** shows that till 21st September, 2019 when the application for revision was supposed to be filed, the administrator of the alleged deceased Director was already appointed as justified by Probate case No. 278/2017. On that basis it is apparent that the argument of having no administrator of estate is not founded as the administrator was there at that material time.

Further to this argument being an afterthought, shall it be assumed to be valid, yet it is undisputed that the respondent is a separate legal entity therefore it can sue or be sued. In this regards, lack of an administrator of estate should not have prevented filing of the matter against the Respondent who is a corporate entity.

I therefore share views with the Respondent that the applicants' allegation regarding the death of Director and appointment of the administrator as a hindrance to timely file the matter is an afterthought and holds no water.

In such circumstance of more than twelve months of delay, I am certain that this ground of having no administrator of estate as advanced by the applicants is not sufficient to form one of the factors which can call upon this Court to exercise its discretion to extend time to file the envisaged revision.

With regards to the **second** ground that they forwarded the matter to the higher authority within CMA to complain against the dismissal, it is an established principle of law that when a party is aggrieved by a decision of a competent authority, the impugned decision can only be challenged by a way of revision or appeal before a Court of competent authority. For the purposes of this matter, the dismissal decision in the CMA, went to the root of the matter to its finality within the CMA. The remedies available when the matter is dismissed is to appeal or to file an application for revision where there is a right to appeal. (See **Yahaya Khamis vs. Hamida Haji Idd and 2 Others**, Civil Appeal No. 225 of 2018, Court of Appeal of Tanzania, at

Bukoba). For that reason, applicants were supposed to challenge the impugned decision by way of revision before this Court and not to refer it to any other authority within the CMA.

Nevertheless, the applicant has an argument that this reason needs to be considered as a technical delay which should not be penalized by denying the extension of time. If not hindered by other factors, technical delay which resulted to the striking out of a matter should not be used to penalize a party by denying such extension of time. This was the position in **Bank M T. Ltd. vs Enock Mwakyusa (Civil Application No. 520 of 2017) [2018] TZCA 291**. In this matter, I will have to find out if apart from that technical delay, there were other factors which caused the delay such as inordinate delay, unaccounted days of delay and illegality.

Before addressing the issue of inordinate delay and unaccounted days of delay I will proceed to firstly consider the grounds advanced by the applicant. With regards to the **third** point regarding to illegality, the Applicant asserted three points which he asserts to constitute irregularity in the CMA, namely, the act of the Mediator dismissing the application while it was filed within 6 days from when the dispute arose, failure to consider the death of the respondent's Director as

one of the challenges for the delay and lastly, applicants had a right to be paid for the services they rendered to the Respondent.

In addressing the third ground on illegality advanced by the applicants, I find it appropriate to start with the ground concerning right to be paid the salary arrears. This assertion needs a proof as to whether the applicants worked for the respondent without such payments. Since in the matter of unfair termination the issue of salary arrears was not determined, I am of the opinion that, it needs a long-drawn argument or process in establishing this claim. This is contrary to the principle relating to the question of illegality which does not need to be discovered by a long-drawn argument or process as it was held in the case of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, Court of Appeal of Tanzania, at Arusha, (Unreported). Actually, this was the central issue for determination in the CMA which was to be proved by evidence. As such, it cannot be an irregularity.

On the **second** asserted irregularity concerning the death of the Respondent's director, it is already discussed herein above on the first ground advanced by the applicants that the issue of the death of

the director does not qualify a justification for the delay. The reasons are given above. I see no reason to reiterate what is already said.

Regarding the Applicant's first point of the asserted illegality that the Mediator dismissed the application which was filed just within 6 days from when the dispute arose, it is well known that the point of illegality is sufficient ground for extension of time. Having gone through the CMA record especially applicants' affidavit and CMA form No. 2, I noted that in those two mentioned documents the applicants' claims were of salary arrears from July, 2017 to 04th April, 2018. I have also noted that the applicants were terminated on 4/4/2018 and the application which rendered the impugned decision was filed on 10/4/2018, truly, just 6 days from the date of the alleged termination. According to item 3 of Form No. 1 which submitted the dispute to the CMA, the nature of dispute is termination of employment. At item 6 (b) of the same form, further description defines the claim to constitute unfair termination.

Despite of having the matter filed within 6 days from the date of termination, the applicants filed a condonation form to request extension of time for the period in which the salary arrears accrued. This raises a question as to whether it was proper for the

condonation form to be filed and what was its effects in the challenged termination if the said termination was given just 6 days before the actual filing of the dispute. In my view, there is a need to consider whether the finding of the CMA which ignored the fact of having the matter filed within 6 days was proper. I am convinced that this is a matter of illegality which can be resolved by a revision application.

I agree with the Respondent's counsel that where there should not be inordinate delay and that all days of delay must be accounted to justify granting of extension of time. It is apparent in the records and pleadings that the decision against which an intended revision is preferred was delivered on 9th August, 2019 while this matter was filed on 11th December, 2020. This means it is more than one year delay. In my view, one year delay is an inordinate delay, and it is not well accounted for. Despite this, the issue of illegality is so paramount which can paralyze the roots of justice to deny right of payment for the services rendered by the Applicants due to the asserted technical irregularity associated with the matter in the CMA. Illegality alone, if confirmed, constitute a good cause for granting extension of time to take a legal action to challenge an impugned decision. (See

Principal Secretary Ministry of Defence and Notional Service

Vs. Devram Valambia [1991] TLR 387). It is on these reasons of illegality that I find important to allow the application for this court to consider whether it was proper for the CMA to ignore any impact which may have caused by having the matter to challenge a termination of employment filed within 6 days after the said termination.

In the upshot, I find the application with merits, and I hereby allow it. The applicants are allowed to file an application for review within 7 days from the date of this of Ruling. Each party to take care of its own cost. It is so ordered.

Dated at Dar es Salaam this 22nd day of April, 2022.



KATARINA T. REVOCATI MTEULE

JUDGE

22/04/2022